

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:) Case No: B-1080438 C-13D
PHILIP R. TYNDALL,)
)
Debtor(s))

)

OBJECTION BY STANDING TRUSTEE TO CONFIRMATION OF PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee (“Trustee”) and respectfully objects to confirmation of the Debtor’s plan pursuant to 11 U.S.C. §1325(b) and shows unto the Court the following:

1. The Debtor filed a petition under Title 11 of the United States Code, Chapter 13, on March 12, 2010, in the United States Bankruptcy Court for the Middle District of North Carolina.
2. On March 12, 2010, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and the Standing Order entered by the United States District Court for the Middle District of North Carolina and this is a core proceeding within 28 U.S.C. §157(b).
4. The petition filed by the Debtor proposes a monthly plan payment of \$162.00 for a period of 60 months. The estimated return to general unsecured creditors is zero percent (0%). There is listed unsecured debt of \$20,126.99 in Schedule “F”.
5. The Debtor has filed with the petition a Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, known as Official Form B22C (“Form B22C”). The Debtor lists current monthly income (“CMI”) in Form B22C of approximately \$4,444.58.
6. Because the Debtor’s CMI does exceed the median income figure for a family of the same size in North Carolina, the Debtor’s reasonable and necessary expenses are calculated on Form B22C pursuant to 11 U.S.C. §1325(b)(3).
7. The Trustee objects to confirmation of the Debtor’s plan in that the Debtor is not be devoting all of his projected disposable income to fund the plan pursuant to 11 U.S.C. §1325(b). The Debtor has taken deductions on line #47 of Form B22C for secured debt payments that are incorrect. The Debtor is surrendering real

property to America's Servicing Company and Greentree; therefore, the Debtor is not permitted to deduct secured debt payments for those claims in Form B22C. Additionally, State Employee's Credit Union ("SECU") is to receive monthly payments of \$146.15 through the plan for a 1999 Ford truck. The deduction of \$221.65 for this obligation is, therefore, improper. The deduction for SECU on a second lien on the 1999 Ford in the amount of \$94.40 is entirely improper since it is being treated as an unsecured claim in that no equity exists in the truck to secure the second lien. With these adjustments to the deductions listed on line #47 of Form B22C, the Debtor should have approximately \$217.29 of monthly disposable income to provide to unsecured creditors.

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the Debtor's plan not be confirmed in that the plan does not comply with the provisions of the Bankruptcy Code, specifically 11 U.S.C. §1325(b), and the case be dismissed for cause pursuant to 11 U.S.C. §1307;
2. That, in the alternative, the Debtor's plan shall be modified to provide for \$13,037.00 to unsecured creditors and the plan payments increased to \$390.00 per month;
3. For such other and further relief as the Court may deem just or proper.

This the 10th day of May, 2010.

s/Benjamin E. Lovell
Benjamin E. Lovell
Attorney for the Trustee
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P.O. Box 3613
Durham, N.C. 27702
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, Philip R. Tyndall, 2286 Gum Springs Church Rd., Pittsboro, NC 27312, and Michael D. West, Esq., U.S. Bankruptcy Administrator, PO Box 1828, Greensboro, NC 27402 by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 10th day of May, 2010.

s/Benjamin E. Lovell

Benjamin E. Lovell, Esq.

Attorney for the Standing Trustee